

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

LEE MAX BARNETT,

Petitioner,

No. CIV S-99-2416 DFL CMK P

VS.

## DEATH PENALTY CASE

ROBERT L. AYERS, JR. Acting Warden  
of San Quentin State Prison,

## **Order Clarifying Claim 22 and**

## Setting Motion to Dismiss Briefing Schedule

Petitioner is a state prisoner proceeding with appointed counsel in this death penalty habeas action. The court held a telephone scheduling conference in this matter on December 6, 2006. Jennifer Corey and Robert Bacon appeared on behalf of petitioner. Tami Warwick appeared on behalf of respondent.

The court notes that claim number 22 in the Third Amended Petition is exhausted if the ineffective assistance of counsel claim refers to Dr. Johnson and not to Dr. Douglas. The confusion regarding the name of the doctor in claim 22 arises from an error that occurred in a state court pleading that erroneously referred to Dr. Douglas instead of Dr. Johnson. There is no Dr. Douglas. The parties agree that claim number 22 is exhausted.

1 The court proposed and the parties agreed to the following briefing schedule.

2 Respondent shall file a motion to dismiss on or before May 27, 2007; petitioner shall file a  
3 response on or before July 20, 2007; respondent shall file a reply on or before August 24, 2007.

4 The court set a telephonic status conference for March 21, 2007 at 11:00 a.m. At  
5 that time the parties will discuss any changes which should be made to the above described  
6 briefing schedule and any other matters which need to be addressed.

7 IT IS SO ORDERED.

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9 DATED: December 6, 2006.

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11 CRAIG M. KELLISON  
12 UNITED STATES MAGISTRATE JUDGE

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